

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1929

SYLLABUS

OPINION NO. 29-325. TAXATION—SCHOOLS—GENERAL SCHOOL TAX.

(1) Section 2, subdivision 2, School Code (chapter 175, Statutes 1295) governs, being subsequent to conflicting section 129 School Code.

(2) Section 140 School Code provides for a levy of 25 cents in addition to that under section 152, subdivision 2.

(3) The legislative method for raising school taxes is exhausted after resort to the foregoing sections.

INQUIRY

Carson City, March 11, 1929.

(1) In determining the county general school tax rate, does section 139 or section 152(2) control?

(2) If section 139 controls, what is the effect of section 152(2)?

(3) Assuming the answer to No. 1 is to the effect that section 139 controls, is it necessary that the county school tax as provided for in section 139 have reached the fifty-cent limit before a special tax can be added under section 140?

(4) Assuming No. 1 is answered to the effect that section 152(2) controls, then how does section 140 apply?

(5) Assuming that No. 3 is answered to the effect that it is not necessary to reach a levy of fifty cents under section 139 before the special tax can be added under section 140, and that the general county tax is 24.4 and the special tax has reached its limit, is there any way a district can get more money without increasing the general county school tax, which would be an increase over the entire county as well as in the particular district needing the additional money?

OPINION

(1) In determining the county general school tax, section 152, subdivision 2, of the School Code is applicable. Section 139 is contrary to the provisions of the latter section and the latter section, having been enacted, Stats. 1925, chapter 175, is the latest expression of the Legislature on the subject.

(2) The answer to the above question makes an answer to this question unnecessary.

(3) The same answer as stated to question 2.

(4) If the amount of tax raised by reason of section 152, subdivision 2, is not sufficient, then an additional tax under section 140, not exceeding 25 cents, may be levied.

(5) If the amount raised by reason of the additional tax authorized by section 140, together with section 152, subdivision 2, is not sufficient, the legislative method for raising tax has been exhausted.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. John R. Ross,

District Attorney,
Yerington, Nevada

SYLLABUS

OPINION NO. 29-326. STATE OFFICERS—TERM LIMIT—LIMIT WHEN CREATED BY LEGISLATURE.

(1) Constitutional officers, excepting that of Justice of the Supreme Court, extend not exceeding four years.

(2) The Legislature, in creating an office, may not provide a term exceeding four years.

(3) If the Constitution creates an office and fixes no term, the Legislature may provide a term thereof of more than four years.

(4) If the Legislature disregards the rule (syllabus 2), an election to such office would be valid but the provision for that part of the term in excess of four years would be void.

INQUIRY

Carson City, March 15, 1929.

(1) Does the Constitution of the State of Nevada provide for any elective official holding an office for a term greater than four years, excepting the judges of our Supreme Court?

(2) Does the Constitution of this State provide or permit the State Legislature to pass any law providing for an election of any official for a term longer than four years, except as to our Supreme Court judges?

(3) If the Legislature has passed such a statute, would the election of such person be legal, and for what length of time can he hold such office, or would the office be declared vacant?

OPINION

(1) The Constitution of the State of Nevada contains no provisions fixing the terms of an elective officer in excess of four years, excepting the offices of Justices of the Supreme Court.

(2) Section 11, article 15, of the Constitution provides:

The tenure of any office not herein provided for, may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the legislature shall not create any office the tenure of which shall be longer than four years, except as herein otherwise provided in this constitution.

Under this section, where an office is created by the Legislature, the term of such office may not exceed four years. Where the office is created by the Constitution and no term is fixed, the Legislature may fix such term in excess of four years.

(3) If the Legislature has created an office and fixed the term thereof in excess of four years, the election of a person to fill such office would be valid, but the term in excess of four years would be void.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. W.E. Organ,

Member of the Assembly,
Carson City, Nevada

SYLLABUS

**OPINION NO. 29-327. JUSTICES' COURTS—ATTACHMENT UNDER \$100—
ALTERNATIVE STATUTORY PROVISIONS APPLICABLE—JURISDICTION—
FEES ON EXECUTION.**

(1) Chapter 174, Statutes 1927, is special and supplementary respecting amounts under \$100, and does not prevent attachment in such amounts in suits brought under the general provisions of law governing Justices' Courts.

(2) Under section 874a Civil Practice Act, inserted by amendment, chapter 174, Statutes 1927 (to follow Rev. Laws 5816), the Justice of the Peace of Tonopah would have no jurisdiction over a named defendant resident of another town or city outside of Tonopah.

(3) Fees may be collected by the Justice and Constable on execution.

INQUIRY

Carson City, March 27, 1929.

(1) Referring to section 874a, p. 297 of the 1926-1927 Statutes of Nevada, that section begins with the words "In *all* cases," etc. At page 299, section 874h, it reads, "No attachment or garnishment shall issue, etc." With these two sections in mind, did the Legislature intend that a Justice of the Peace shall not issue an attachment or garnishment where the amount claimed does not exceed \$100? Has a Justice of the Peace the authority, even though an affidavit and undertaking has been filed, to issue an attachment where the claim does not exceed \$100? To be more clear: Are there two methods or procedures open to a claimant where the claim does not exceed \$100, one wherein a writ of attachment or garnishment may be issued by a Justice and one wherein a writ of attachment or garnishment cannot be issued by a Justice?

(2) Under the same section (874a) mentioned above, has the Justice of the Peace of Tonopah Township, Nye County, Nevada, any jurisdiction over a party named as a defendant when said defendant is a resident of Tybo, Nye County, Nevada (the demand not exceeding \$100 and the action to be maintained in Tonopah, there being no Justice of the Peace at Tybo)?

(3) Referring to page 299, section 874h, that section states as follows: "But execution may issue in the manner now prescribed by law, as in other cases arising in the Justice's Court." Are the Justice and Constable correct in collecting the fees prescribed by law for the issue and service of the execution, as in other cases?

OPINION

(1) The Justice of the Peace has jurisdiction and authority to issue an attachment for an amount under one hundred dollars where claimant is not proceeding under Statutes 1927, p. 297. The provisions contained in these latter amendments apply only to cases where claimant proceeds thereunder, and they in no way affect or curtail the right of a party to request the issuance of an attachment under the general provisions of law applicable to Justice of the Peace Courts.

(2) The Justice of the Peace of Tonopah Township would have no jurisdiction over a party named defendant where said defendant is a resident of another town or city outside of Tonopah.

(3) Fees may be collected by the Justice of the Peace and Constable for issuing and serving an execution.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Walter Bowler,
Tonopah, Nevada

SYLLABUS

OPINION NO. 29-328. STATUTES—TITLE—SO MUCH OF SUBJECT MATTER NOT EMBRACED IN EXPRESSED TITLE IS VOID.

- (1) Constitution, article IV, section 17, interpreted.
- (2) Words “Salaries of deputies in the several State offices,” describing subject matter embraced in an Act, do not extend to salary of Official Reporter of the Supreme Court.
- (3) The Legislature is presumed to act advisedly and in this case was advised.

INQUIRY

Carson City, March 30, 1929.

There appears to be a difference of opinion regarding that part of Senate Bill No. 175 providing for the payment of \$2,700 to the Official Court Reporter, it being stated that there is a conflict between the title and this particular provision.

Will you kindly examine Senate Bill No. 175 (it being Chapter 116, of the 1929 laws) and inform me if, under this law as approved by the Governor on the 25th instant, I can issue a warrant in payment of the salary of this officer in accordance with the provisions of said Act.

OPINION

From the recitals contained in the title of this Act, it will be noted that the salary of the deputies in the several State offices is the subject matter for legislation. The title of the Act does not give the slightest intimation that the matter of the salary of the Official Reporter of the Supreme Court is to be considered. It is elementary, of course, that the Official Court Reporter is not a deputy State officer.

To sustain the Act of the Legislature in determining the compensation of the court reporter by reason of this statute, would be, in effect, by construction to eliminate from the Constitution of the State one of its most important provisions. Article 4, section 17, of the Constitution provides:

Each law enacted by the legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be reenacted and published at length.

The Supreme Court of Nevada, in the case of *Humboldt County v. The County Commissioners of Churchill County*, [6 Nev. 31](#), in construing this provision of the Constitution, stated:

The design of this provision is to prevent improper combinations to secure passage of laws containing subjects having no necessary or proper relation and which, as independent measures, could not be carried; also, to prevent the Legislature and the public from being misled by the title.

In the case of *State v. Hallock*, [19 Nev. 384](#), the Court stated:

The courts cannot enlarge the scope of the title. They are vested with no dispensing power. The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so.

See, also, *State v. Gibson*, [30 Nev. 353](#).

Having in mind, therefore, this provision of the Constitution, as construed by the Supreme Court of Nevada, it must follow that, because the title of this Act is not sufficiently broad to give notice that the salary of the Official Court Reporter was to be acted upon by the Legislature, the provisions contained in the Act concerning the salary of the Supreme Court Reporter are not effective for any purpose.

The fact that the title of this Act was not sufficiently broad to include this legislation was specifically called to the attention of the members of the several committees before whom this matter was pending, and a request was made that the title of the Act be amended so that it might include the Supreme Court Reporter. The failure, therefore, on the part of the Legislature to enact a title to this bill sufficiently broad to include the Supreme Court Reporter may not be assigned to ignorance of the law or ignorance of the fact.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Ed. C. Peterson,
State Controller,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-329. STATUTES—SALARIES OF STATE EMPLOYEES—APPROPRIATIONS.

(1) Statutes 1929, chapter 208, interpreted to exclude clerk employed by a board or doing work under a special Act, such not being employed “in the offices of elected officers” and doing work of the nature designated.

(2) In computing salary schedules under Act, aggregate time of employment governs irrespective of continuity.

(3) Salaries may be paid from the General Fund if no special fund be designated, provided the intent to make an appropriation be clear and certain.

INQUIRY

Carson City, April 25, 1929.

The following inquiries concerning chapter 208, Statutes of 1929, are submitted:

(1) Whether or not a clerk for the retirement division of the Department of Public Instruction and employed under authority of the Retirement Salary Board is entitled to the benefit of chapter 208, Statutes 1929.

(2) Whether a clerk engaged in research by authority of a special Act of the Legislature is within the provisions of the law.

(3) Where a former State employee is reemployed, who has been out of the service a week, month or a year, can such employee claim and be paid a salary in excess of the minimum by reason of and in accordance with the length of such prior service as specified in section 1 of said Act?

(4) As this Act does not specify from which fund these salaries are to be paid and no provision is made in the General Appropriation Act for the various salary raises, how can the various raises be paid, and from what fund?

OPINION

(1) Section 1 of the Act provides it shall apply to “each stenographer, typist or clerk * * * employed in any of the various offices of elective officers of the State of Nevada.”

A clerk employed by the Retirement Salary Board would not be employed by an elective officer and, therefore, would not come within the provisions of the Act.

(2) A person employed to do research work under the special Act of the Legislature authorizing such work could not be considered a clerk, typist, or stenographer employed in an elective office within the meaning of the Act, as such employment is of a different nature from that covered by the Act.

(3) Where a former State employee is reemployed by the State, such employee is entitled to credit for his or her former employment, for the reason that the benefits conferred by the Act are dependent solely upon length of time an employee is employed by the State and not upon continuous employment.

(4) The failure to specify from what fund a salary is to be paid does not invalidate an appropriation, if the intent appears to make such appropriation, but, such appropriation will be deemed to have been made from the General Fund. *State v. Westerfield*, [23 Nev. 468](#).

Respectfully submitted for the Attorney-General.

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Ed. C. Peterson,
State Controller,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-330. CORPORATIONS, DOMESTIC—FILING FEES—CHANGING CAPITALIZATION.

(1) An amendment not increasing the number of shares or the par value of shares of stock requires a filing fee of \$20 only in all cases where the original articles designated a number of shares without par value and no stock having par value.

(2) The fee for filing amended articles should, with the original fee, equal the amount payable if the amended were the original articles in cases where detriment would otherwise occur to the State from the whole transaction. This situation arises by reason of a

downward-sliding scale of fees above \$1,000,000 aggregate capital, respecting par-value stock only.

INQUIRY

Carson City, April 26, 1929.

(1) A domestic corporation has a capitalization of 1,000,000 shares of no par value. The filing fee paid was \$100. This company has amended its articles by changing the value of the shares from no par value to the value of \$1 per share, making a total capitalization of \$1,000,000.

What is the fee for filing this amendment?

(2) A company has a capitalization of 2,500,000 shares of the par value of \$1—total capitalization, \$2,500,000. This company amends its articles by changing the 2,500,000 shares of a par value of \$1 per share to 2,500,000 shares of no par value, making a total capitalization of 2,500,000 shares.

What is the fee for filing this amendment?

OPINION

(1) Under the facts stated, if the corporation had originally been organized for 1,000,000 shares of the par value of \$1, the charge under the law would have been \$100. Stats. 1929, chapter 195. The amendment proposed seeks to authorize the issuance of 1,000,000 shares of the par value of \$1 a share and, if the original articles contained such authorization, the fee, under the law, would have been \$100.

Statutes 1929, chapter 195, fixes the fees to be collected by the Secretary of State. As to the fees to be charged by the Secretary of State for filing amendments to articles of incorporation the law provides:

and whenever there shall be filed with the secretary of state a certificate amending articles or certificate of incorporation by increasing the authorized number of shares or the par value of shares, the secretary of state shall demand and receive for the use of the state ten cents on each one thousand dollars par value of such increase, or, in the case of shares without nominal or par value, ten cents for each additional one thousand shares so authorized.

The statute further provides as follows:

amended articles or certificates of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, the increase or decrease of par value of, or the number of shares, twenty dollars.

The amendment contemplated here cannot be said to be an amendment that contemplates the increase of the par value of the stocks because such contention implies that there must have been an initial issue to be increased. *See People v. Public Service Commission*, 122 N.Y. Sup. 641.

Inasmuch, therefore, as the amendment does not increase the par value of the stock or increase the number of shares, the charge to be made for filing such amendment would be \$20.

(2) If the amended articles were originally tendered for filing by the corporation mentioned, the charge would be \$250. Under the law, the charge that was legally made for the corporation as incorporated would be \$175.

It is my opinion that amendments may not be filed under terms more favorable than the original filing, and, also, that, by amendments to the original articles, the State cannot be deprived of the right to charge a filing fee that would have been charged for filing the original papers.

It is my opinion, therefore, that, under the second inquiry, the fee to be charged for filing the proposed amendment is the sum of \$75.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. W.G. Greathouse,
Secretary of State,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-331. PUBLIC SERVICE COMMISSION—CONDITIONS ANNEXED TO CERTIFICATES OF PUBLIC CONVENIENCE.

Section 36 1/2 Public Service Commission Act interpreted as permitting the imposition of terms and conditions different from those indicated in the application.

INQUIRY

Carson City, April 30, 1929.

Whether or not the Public Service Commission of Nevada may, in granting an application for a certificate of public convenience, prescribe terms under which the certificate shall be granted different from those which the applicant proposes in his application.

OPINION

Section 36 1/2 of the Public Service Commission Law provides in part: "The commission shall have the power, after hearing, to issue or refuse such certificate of public convenience, or to issue it for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, and may attach thereto such terms and conditions as in its judgment the public convenience and necessity may require."

This section of the law apparently answers the question, and a similar law has been construed in the case of *Hunter v. Board of Public Utility Commissioners*, 141 Atl. P. 90.

We are, therefore, of the opinion that the Commission may prescribe terms under which a certificate shall be granted different from those which the applicant proposes in his application.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By William J. Forman,
Deputy Attorney-General

J.F. Shaughnessy,
Chairman of the Nevada Public Service Commission,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-332. STATE HIGHWAY LAW—TAXATION—COUNTY—STATE HIGHWAY FUND AND COUNTY TAX LEVY THEREUNDER IS ELIMINATED.

State Highway Act, Statutes 1917, chapter 169, as amended by Statutes 1929, chapter 138, interpreted.

INQUIRY

Carson City, May 7, 1929.

Reference is made to the amendments to the State Highway Law passed by the last State Legislature and particularly to amended section 11. Section 11, as amended, reads as follows:

All money remaining in the county-state highway fund, and not obligated by July 1, 1929, is to be expended on the state highway system within the counties, such expenditure to be under the control and direct supervision of the state highway engineer.

The County Commissioners of several of the counties have asked if the amendment to section 11 abolishes the County-State Highway Fund, and if it will be permissible to levy and collect a tax, the proceeds of which will be placed in the County-State Highway Fund.

OPINION

Under Statutes 1917, chapter 169, by virtue of sections 10 and 11 of this law, the County-State Highway Fund was created. Statutes 1929, chapter 138, amends sections 10 and 11 of the General Highway Law by striking out from these sections the provisions concerning the creation of the County-State Highway Fund.

Authority for the County Commissioners to levy a tax under these sections has also been eliminated by reason of the amendment.

It is our opinion, therefore, that, by reason of the amendment, the County-State Highway Fund has been eliminated, and no authority exists under the provisions of this law for the several County Commissioners to levy a tax thereunder.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. S.C. Durkee,
State Highway Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-333. FISH AND GAME—LICENSES—STATUTORY PENALTIES—MISDEMEANOR.

(1) Possession by nonresident of fishing license not differing in form from resident license, deemed probably good defense against prosecution under section 55, chapter 178, Statutes 1929.

(2) Section 55, supra, denouncing fishing without a license and specifically providing for that offense as a "misdemeanor," held to make the penalty provisions in section 94 inapplicable, so that under section 55 an fine of less than \$50 lawfully may be imposed.

INQUIRY

Carson City, May 8, 1929.

I am herewith writing to ask you for an opinion as to whether or not, as a matter of law, a prosecution can be correctly maintained under the following situation:

I first call your attention to sections 53, 54, 55, 56, 57 and 60 of chapter 178, Session Laws of 1929.

(1) A nonresident of the State of Nevada secured a license, corresponding in substance to the provisions of section 53, and paid for the same the sum of \$1.50. A prosecution is instituted against him for fishing while in the possession of said license, upon the theory that he is a nonresident and not entitled to a \$1.50 license.

Mr. Summerfield and myself have some doubt as to whether or not such a prosecution can be successfully maintained, by reason of the fact that a license, and the only type of license provided by law, had been issued to him. The mere fact that section 54 gives the price schedule does not necessarily call for the issuance of any other type of license. In other words, it would seem that only one type of license may be issued and, as a matter of fact, the defendant in the instant case had such a license in his possession.

(2) In addition, I should like to ask for a ruling upon a slightly different question. Observe that section 55 provides that one "who fishes without having first procured a license therefor, as provided in this act, shall be guilty of a misdemeanor." Observe, also, the provisions of the last paragraph of section 94. In your opinion, if the action herein described is maintainable at all, are the provisions of section 94 controlling, and, in case of a conviction, may the Justice of Peace impose a fine of less than \$50?

OPINION

(1) Statutes 1929, chapter 178, provides a general law in reference to hunting and fishing and other matters properly relating thereto. Section 53 of this law provides for a particular form of fishing and hunting license. This form, under the law, is to be issued irrespective of whether the party receiving the same is a citizen of the State of Nevada or a nonresident.

If, therefore, in the instant case, the party arrested had in his possession the form of license required by law, he would not be liable to a charge of fishing without a license. He possessed the proper license which the law required. If he were a nonresident, it was the duty of the party who issued the license to determine this fact at the time the license was issued and make a charge accordingly, but, the license having been issued, we have no authority to go back of it and determine whether the party paid a sufficient amount under the law.

Under the facts stated, therefore, possession of the license, in my opinion, would be a complete defense.

(2) Section 55 of the statute makes it a misdemeanor for any person over the age of fourteen to hunt or fish without a license. As a penalty for such conduct, this section specifically provides that anyone who violates it is guilty of a misdemeanor.

Section 94 of the Act makes provision for the punishment of all sections of the Act and, upon conviction, a fine of not less than fifty dollars, etc., shall be imposed.

I concur in your construction of this law and am of the opinion that the punishment provision, as provided in section 94, has no application to section 55, and that a fine of less than fifty dollars may be imposed for section 55.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Lester D. Summerfield,
District Attorney,
Reno, Nevada

SYLLABUS

**OPINION NO. 29-334. TAXATION—PERSONAL PROPERTY—AUTOMOBILES
TEMPORARILY IN STATE NOT TAXABLE.**

Statutes 1925, chapter 122, section 4, construed to exempt automobile of foreign corporation possessed by agent supervising installation of machinery.

INQUIRY

Carson City, May 16, 1929.

Whether or not an agent of a California corporation who comes into this State for the purpose of installing machinery for a mining corporation is required to pay a personal property tax on an automobile in his possession belonging to his employer.

OPINION

Section 4, chapter 122, Statutes of 1925, provides, in part: “The owner shall then be required to pay to the county assessor the personal property tax on said vehicle *if same be subject to taxation in this State.*”

Whether the Assessor acted in accordance with law in taxing the vehicle mentioned in the inquiry depends upon whether or not such vehicle was taxable in this State. The test of what is taxable personal property is given in the case of *Robinson v. Longley*, [18 Nev. 71](#), wherein the Court states that, if the property was within this State only temporarily, in the ordinary course of business, or if it was really only passing through the State, it was not taxable.

If the facts in the case of the vehicle mentioned in the inquiry show that the owner had such vehicle within this State only temporarily and for a short period, so that it could be said that the vehicle was actually only passing through the State, then it was not taxable; otherwise, it would be subject to taxation here.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Guy E. Baker,
District Attorney,
Ely, Nevada

SYLLABUS

OPINION NO. 29-335. STATE PROPERTY—STATUTES—PROVISION FOR SALE STRICTLY CONSTRUED—NEVADA HISTORICAL SOCIETY.

Statutes 1925, chapter 155, section 1, interpreted as limiting authority of Capitol Commissioners to sell State property to period ending January 1, 1927, other conditions being satisfied.

Carson City, May 22, 1929.

I have your request for an opinion as to the authority of the Board of Capitol Commissioners to sell the Nevada Historical Society property under the provisions of Statutes 1925, p. 237.

OPINION

Section 1, Statutes 1925, chapter 155, in part provides:

The board of capitol commissioners of the State of Nevada are hereby authorized and directed as soon as the relics, library, manuscripts, museum, and collection of the Nevada historical society shall be provided with suitable quarters in the said Nevada building erected in Reno and, in any event, not later than January 1, 1927, to sell all lots, lands, and buildings heretofore acquired and purchased * * *.

While this section fixes the time limitation when the sale shall be made as not later than January 1, 1927, it also appears from the Act that, before the sale was to be made, suitable quarters were to be had for the collection in the Nevada State Building. Both of these conditions, therefore, were to be considered in determining the date when the power of the Capitol Commissioners under the Act ceases. If the Nevada State Building was completed prior to January 1, 1927, and the collection described was moved prior to this date, under the provisions of the Act the sale of the property should have been made prior to January 1, 1927.

If the facts establish that, long prior to the present date, the collection has been housed in the Nevada State Building, I am of the opinion that the board would not now have authority to sell the property described in the Act. The Legislature apparently has directed that the sale shall be made prior to January 1, 1927; the limitation on this date, however, is fixed by the existence of facts which would warrant the right to remove the collection into the Nevada State Building.

After the 1st day of January, 1927, therefore, or after the time the collection was moved into the Nevada State Building, the Capitol Commissioners would have no authority to order the sale because the provisions of the Act must be construed as fixing a date after which the board would have no authority to dispose of the premises.

See *Burkley v. The City of Omaha*, 167 N.W. 72; *Walser v. Moran*, [42 Nev. 111](#).

It was with this situation in mind that, in my opinion under date of January 10, 1928, I suggested that the Legislature be requested to pass an Act giving the board this power.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. J.H. White,
Secretary, Board of Capitol Commissioners,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-336. STATE BOARD OF INVESTMENTS (STATE BOARD OF FINANCE SUCCESSOR), POWERS OF—STATE PERMANENT SCHOOL FUND.

Statutes 1917, section 4, page 399, interpreted to effect that bonds purchased as an investment of funds may be sold for cash in the open market to the highest bidder; the board being empowered to invest, convert and reinvest State Permanent School Funds.

INQUIRY

Carson City, May 22, 1929.

The State Board of Finance at a meeting on May 8, 1929, passed the following resolution:

Resolved, That the Secretary be instructed to obtain from the Attorney-General an opinion as to the legal authority of this board to dispose of bonds held by the State Permanent School Fund with particular reference to the Commonwealth of Massachusetts Metropolitan Water Loan Bonds which this board may desire to sell at less than the purchase price in order to reinvest the funds at a higher yield.

Will you kindly furnish me with the required opinion?

OPINION

Your attention is called to section 4, Statutes 1917, p. 399. Under this section the Legislature has authorized the State Board of Investments to convert any bonds or securities in which any part of the State Permanent School Fund is now or at any time hereafter may be invested into cash by selling the same in the open market to the highest bidder.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. E.J. Seaborn,
Secretary, State Board of Finance,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-337. CONSTITUTIONAL LAW—STATUTES—COUNTY GOVERNMENT—PUBLIC UTILITIES—HAWTHORNE WATERWORKS PLANT STATUTE DECLARED CONSTITUTIONAL.

Statutes 1929, chapter 141, authorizing County Commissioners to grant a water utility franchise; also authorizing construction and operation of a municipal plant; authorizing a bond issue, taxation of district affected, etc., declared ambiguous but not repugnant to the State Constitution.

Carson City, May 27, 1929.

An opinion is requested concerning the legality of chapter 141, Statutes 1929, p. 179.

OPINION

I have carefully read the several sections of this law, and, while some of the provisions are ambiguous, I am of the opinion that the Act is constitutional.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Fred B. Balzar,
Governor of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-338. STATE OFFICERS—STATE FUNDS—APPROPRIATIONS— CONSTITUTIONAL LAW—COURTS—JUDICIAL POWER—AUTOMOBILES, RIGHT TO OPERATE, DETERMINATION AND REGISTRATION OF TITLE.

(1) Section 6, chapter 122, Statutes 1925, requires the Motor Vehicle Department to purchase certain containers. Section 8, chapter 217, Statutes 1929, requires the holder of a certificate of motor vehicle registration to carry it in a certain container. Section 2 of the same chapter requires the department to assess the cost of such a container against the purchaser of each certificate.

Chapter 213, Statutes 1929, forbids, inter alia, any State officer or the head of any department to bind the State or any fund "in excess of the specific amount provided by law." Held under the above facts, and in absence of specific appropriation, no such containers can be officially purchased, notwithstanding the expectation of reimbursement from the proceeds to come in through the sale thereof.

(2) Chapter 186, Statutes, 1929, purports to authorize the Motor Vehicle Department to determine the ownership and title of certain motor vehicles and prohibits their registration or operation without a certificate of title from the department. Section 8, chapter 217, Statutes 1929, requires an appeal or court action as relief from adverse action by the department. Held, the foregoing provisions to be unconstitutional attempts to confer entire judicial power on an administrative officer and to provide for appeals.

INQUIRY

Carson City, May 27, 1929.

Your attention is directed to Statutes 1929, chapter 217, and to section 6, Statutes 1925, chapter 122.

If the provisions in reference to the purchasing of containers, as directed under Statutes 1929, are mandatory, you are advised that no appropriation was made by the Legislature for this expenditure, and that this department has not money sufficient to pay for such supplies at the present time, and the money will not be available until during the year 1930.

An opinion is requested, therefore:

- (1) As to what action this department should pursue under the aforesaid legislative Act concerning the purchasing of containers; and
- (2) Is section 8, chapter 217, Statutes 1929, constitutional?

OPINION

Section 6, chapter 122, Statutes 1925, provides that “The department shall purchase all number plates, containers, and other supplies required by this Act.”

Statutes 1929, chapter 217, is an amendment of the Uniform Motor Vehicle Anti-Theft Act which was passed by the 1929 session of the Legislature of the State of Nevada. Under section 8 of this amendment it is provided that “Every certificate of registration issued under the provisions of this Act shall be carried in a container that will protect the same, and in which the certificate may be removed only by mutilating the certificate.”

Section 2 of the amendatory Act provides: “The vehicle department shall assess the cost of said container against the purchaser.”

Under section 6 of the Motor Vehicle Act the duty is placed upon the Secretary of State to obtain containers for certificates in the first instance, and, while under section 2 of the amendatory Act the cost of such container must be assessed against the purchaser, such provision does not render available to your department sufficient money to pay for such containers until after sales of the containers are made to the purchasers.

It is noted in your request for an opinion that you state that at this time you have not sufficient money on hand to pay for such containers.

Under these facts, you are advised that under Statutes 1929, chapter 213, it is made unlawful for any State officer, commissioner, or head of any department in this State “to bind, or attempt to bind, the State of Nevada or any fund or department thereof, in any amount in excess of the specific amount provided by law.”

Under this provision, therefore, it would be unlawful for your department to enter into any contract for the purchase of containers unless at the time such contract was entered into you had an amount of money on hand sufficient to comply with the provisions of the contract.

(2) Concerning the constitutionality of section 8, chapter 217, Statutes 1929, it will be noted that this section is an amendment to Statutes 1929, chapter 186. This Act designates your department as the tribunal which must pass upon the ownership and title of every motor vehicle that is to be operated in this State. No more vehicles, under the terms of this Act, may register or operate without a certificate of title from your department. Section 8, *supra*, provides, in substance, that if, from the facts presented in respect to ownership, the department refuses to issue a certificate “unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant shall have no further right to apply for a certificate of title.” Further provision is made that “the department may, for a like reason, after notice and hearing, revoke registration already acquired * * *. An appeal may be taken from any decision of the department as from the decision of a justice of the peace.”

The Legislature, by enacting these several provisions, has placed with the department judicial power to determine the ownership and title of motor vehicles; it has further denominated conclusions reached by your department in reference to ownership as a decision from which the party aggrieved may appeal to courts in the same manner as appeals are taken from a decision of a Justice of the Peace.

The method of procedure thus provided for is unconstitutional and void for the reason that it attempts to confer judicial power upon an administrative officer. The Supreme Court of Nevada in the case of *Pitt v. Scrugham*, [44 Nev. 418](#), held certain sections of the Water Code of this State unconstitutional because the provisions of these sections gave judicial power to the State Engineer to hear and determine contests.

It is apparent from reading the sections quoted from the law, *supra*, that the motor vehicle department has been given a power to determine questions involving a property right, and the only recourse afforded to the property owner in case of an adverse decision is to appeal from such decision to the courts of this State.

It is my opinion, therefore, that these provisions are unconstitutional.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. W.G. Greathouse,
Secretary of State,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-339. AUTOMOBILES IN TRADE OR BUSINESS—REGISTRATION AND LICENSE—FOREIGN ORIGIN.

(1) Section 2 Motor Vehicle Act interpreted in respect of facts as stated.

(2) Foreign cars brought into Nevada for purpose of engaging in business must procure Nevada license within five days after first entrance.

INQUIRY

Carson City, May 29, 1929.

A car was driven into Nevada on a business mission, remaining her but one night. On May 16 the same car and same driver came into the State again on business.

Under section 2 of the Motor Vehicle Act does such motor vehicle become subject to the payment of the Nevada license?

OPINION

Section 2 of the Nevada Motor Vehicle Act provides, in part, as follows:

In case of motor vehicles brought into this State for the purpose of engaging in trade or business of any kind, and motor vehicles or stage or bus lines, having defined interstate routes with one terminal in this state, or passing through this state with terminals outside the state, registration shall be made within five days after entering the State.

Under the provisions of this section, therefore, a motor vehicle which enters the State, under the conditions named, must, within five days after its first entrance into the State, procure a Nevada license.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By William J. Forman,
Deputy Attorney-General

Hon. J.F. Miles,

County Assessor,
Ely, Nevada

SYLLABUS

OPINION NO. 29-340. INTOXICATING LIQUORS—LICENSES—STATUTES— REPEALS—CONFLICT OF LAWS.

Revised Laws, 6839, 6840 and 6841 relating to “mushroom” saloons near construction camps, held not repealed by Legislature, and in full force and effect.

INQUIRY

Carson City, July 10, 1929.

Have sections 6839, 6840, and 6841, Revised Laws of Nevada, 1912, been repealed by State and national legislation, or are they now in full force and effect?

OPINION

The sections referred to have not been repealed by the Legislature of the State of Nevada and are, therefore, in full force and effect.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. F.B. Balzar,
Governor,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-341. TAXATION—PERSONAL PROPERTY—SALE WITHOUT SUIT.

(1) In view of chapter 178, Statutes 1927, County Treasurer may not sell for delinquent taxes, without suit, personal property of an assessed value exceeding three hundred dollars.

(2) Opinion 307 (1927-1928) to the contrary was confined to a requested interpretation of chapter 162, Statutes 1927, and is now held categorically right but practically wrong.

INQUIRY

Carson City, July 24, 1929.

Whether or not Opinion No. 307, Opinions of the Attorney-General, 1927-1928, is erroneous in ruling that a County Treasurer may sell for delinquent taxes, without suit, personal property which is assessed at a value greater than three hundred dollars.

OPINION

The ruling above quoted was made under a construction of chapter 162, Statutes 1927. The inquiry in the opinion asked the question whether, under chapter 162, such action was authorized.

In view of chapter 178, Statutes 1927, undoubtedly this ruling is erroneous. Chapter 178 amends the same section and provides that a County Treasurer may sell personal property which has an assessed valuation not exceeding three hundred dollars.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. J.A. Houlahan,
District Attorney,
Goldfield, Nevada

SYLLABUS

OPINION NO. 29-342. AUTOMOBILES—COMMON CARRIERS—LICENSES.

Section 3, chapter 326, Statutes 1927, interpreted to require license for each passenger car used in common carrier's business, notwithstanding some cars are "held" for use in case of emergency.

INQUIRY

Carson City, July 24, 1929.

A stage company, operating across the State of Nevada, uses eight stages in its business. Only six of these cars, however, will be used daily, but two are held for use in case of emergency. Should such company be required to secure licenses for the eight cars or for six cars?

OPINION

Under the plain provisions of section 3 of chapter 326, Statutes 1927, a common carrier, operating such line within this State, is required to secure a license for each passenger car used in its business.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. J.F. Shaughnessy,
Chairman, Nevada Public Service Commission

SYLLABUS

OPINION NO. 29-343. STATE PROPERTY—NEVADA STATE BUILDING—STATE BOARDS AND COMMISSIONS—CONFLICT OF LAWS.

(1) Chapter 40, Statutes 1925, and chapter 142, Statutes 1927, providing for the construction and supervision of the State Building in Reno, are not in conflict with chapter 215, Statutes 1929, providing for the lease of said building.

(2) The two first-named statutes did not authorize the boards thus designated to permanently allot space in said building for county exhibits nor restrict the lease under the last-named statute.

INQUIRY

Carson City, July 26, 1929.

By the provisions of chapter 40, Statutes of 1925, the Nevada Building Commission was created to construct and take charge of the State Building in the city of Reno. By chapter 142, Statutes of 1927, the Nevada State Building Board was created, consisting of the Governor, Secretary of State, and Inspector of Mines, and specifically charged with the control and supervision of the Nevada Building constructed by virtue of chapter 40, Statutes of 1925, and for which a bond issue was created to provide for the payment thereof.

The Nevada State Building Board, which is charged as custodian of said building, desires your opinion as to whether or not there is anything in the 1929 Statutes which relieves the board of the duties created by the laws hereinabove referred to, and also your opinion is desired upon the point as to whether or not the board may legally transfer the possession of said building to the city of Reno or the county of Washoe by virtue of any of the provisions of the Statutes of 1929 or any lease between the city of Reno, county of Washoe, or State of Nevada, or between all or either of each bodies.

Your opinion is also requested as to whether or not, in view of certain contracts made with the various counties of the State of Nevada regarding the allotment of space in the building, and the statutes providing for the housing of county exhibits, perpetually prevents the State Building Board from surrendering possession and the custody of the building, and, in the event of such surrender, what liability, if any, devolves upon the State Building Board.

Your opinion also is requested as to whether or not chapter 40, Statutes of 1925, and chapter 142, Statutes of 1927, are repealed by any provision of the 1929 statutes so as to relieve the State Building Board of its duties, and, if so, what, if any, duties remain for the State Building Board.

OPINION

As stated in the inquiry, Statutes of 1925 created a Nevada Building Commission, the duties of said commission being to construct a Nevada State Building at Reno and, after such construction, to take charge of the same.

By Statutes of 1927, chapter 142, the personnel of the Nevada Building Board was changed by legislative Act, and the Governor, Secretary of State, and Inspector of Mines were designated as a board to supervise the construction of said building under Statutes of 1925.

Statutes of 1929, chapter 215, designated the members of the State Capitol Commission as the agents of the State for the purpose of executing a lease of said building to the city of Reno for a period of ninety-nine years. The enactment of this latter statute would not repeal Statutes of 1927

nor would it in any way interfere with the duties of the board created under the 1927 Act. The Nevada Building Commission would still function.

Under the terms of the Statutes of 1929, the Board of Capitol Commissioners may legally transfer the possession of the Nevada State Building to the city of Reno, and, under this legislative mandate, no one has the authority to interfere with such transfer, and, after the lease has been executed, it becomes the duty of the State Capitol Commissioners to perform each and every act necessary to carry out the terms of the legislative Act of 1929 and execute the lease and transfer the possession of the Nevada State Building to the city of Reno.

I am aware of no provision in either the Statutes of 1925 or 1927 which would authorize the Nevada Building Commission to enter into contracts with the various counties concerning the allotment of space for county exhibits. It is to be presumed, of course, that every person dealing with the State knows the law and, if such contracts were entered into, the existence of the contracts would in no way affect the right of the State to lease the building. The Legislature of this State has determined, by reason of the enactment of the 1929 law, that the Nevada State Building should be leased. Whether in making this determination the Legislature adopted a good or bad policy is not a question for decision.

Statutes of 1925, supra, and the Statutes of 1927, supra, are not repealed by the provisions of Statutes of 1929, and, under these prior statutes, the State Building Board may function in so far as said building is concerned. This board represents the State in matters connected with the State Building apart from the leasing of the same.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

The Nevada State Building Board,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-344. WATERS—IRRIGATION DISTRICTS—GRAND JURIES, INQUISITORIAL POWER—PUBLIC CORPORATIONS.

Irrigation districts, being public corporations under legislative authority, are subject to investigation as to their fiscal and financial affairs by the grand jury.

INQUIRY

Carson City, August 6, 1929.

First, is it the right and privilege of a grand jury to investigate the fiscal and financial affairs of an irrigation district incorporated under the laws of the State of Nevada, in the same manner and of the same effect as they may examine into and make inquiry concerning the fiscal and financial affairs of the county in which they are impaneled; or of any legal subdivision such as a school district, city or other municipality?

Second, is an irrigation district incorporated under the laws of the State of Nevada amenable to and subject to the inquisitorial powers of the regularly impaneled grand jury of the county?

OPINION

I am of the opinion that a grand jury would have the right to investigate the fiscal and financial affairs of an irrigation district in the same manner as they may examine into the affairs of a school district or city. This conclusion is based upon the fact that the courts of the several States have held that an irrigation district is a public corporation and that its officers are public officials charged with the duty of carrying out the provisions of the law. While some authorities seem to question the correctness of the statement that an irrigation district is a public corporation, for the purpose of your query I am of the opinion that a grand jury would have the power to investigate the affairs of such corporation. Organizations of this kind are brought into being by legislative authority for the purpose of promoting the general welfare.

The Supreme Court of the United States in the case of *Fallbrook Irrigation District v. Bradley*, 164 U.S. 112, held that the formation of a district amounted to the creation of a public corporation and that the officers were public officers.

See, also, *Turlock Irrigation District v. Williams*, 18 P. 379.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Clark J. Guild,
District Judge,
Yerington, Nevada

SYLLABUS

OPINION NO. 29-345. SCHOOLS—INDUSTRIAL INSURANCE—LIABILITY FOR INJURY TO STUDENT.

(1) State school districts and school boards in their official capacity are not liable for a tort, and have no authority to insure against any such fancied liability.

(2) A student in a public school shop is not subject to insurance, not being an employee within the meaning of the Industrial Insurance Act.

INQUIRY

Carson City, September 9, 1929.

- (1) Who is liable in case of an accident to a student in a school shop?
- (2) In case the liability extends to the school board, or school district, or the teacher, to what extent does the liability exist?
- (3) Can school boards take out insurance to protect students in case of such accidents?

OPINION

(1) Answering your first inquiry, it is impossible for us to state who might be liable under the circumstances without a complete statement of the facts.

(2) Under the laws of this State school districts are considered agencies of the State and would not be liable for a tort. As to whether or not the individuals constituting the school board or the teachers would be liable depends upon whether or not they were guilty of negligence.

(3) It is our opinion that school boards could not take out insurance, for the reason that the relation of employer and employee does not exist. In any event, the school boards in their official

capacity would not be liable for a tort and, therefore, would not be authorized to take out insurance.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Walter W. Anderson,
State Director of Vocational Education,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-346. FEES—CLERK OF SUPREME COURT.

The exemption from payment of fees provided in chapter 71, Statutes 1921, is only for the officer, commission, etc., in official capacity, who is a party, and not for any private individual party in action.

INQUIRY

Carson City, September 10, 1929.

Whether, under Statutes of Nevada, 1921, chapter 71, a fee of twenty-five dollars should be charged in a proceeding entitled as follows: “A petition for Writ of Prohibition. *R.E. Norton v. The Third Judicial District Court of the State of Nevada*, in and for the County of Lander, and Honorable W.R. Reynolds, Judge of said Court.”

OPINION

Chapter 71, Statutes of 1921, provides in part as follows:

No such payment shall be required from, and no fees shall be charged by, said clerk in any action brought in or to said court wherein the state, or any county, city or town thereof, or any officer or commission thereof is a party in his or its official capacity, against said officer or commission.

This exemption is the only one granted to the payment of the twenty-five dollar fee.

We are of the opinion that the exemption only extends to the officer or commission in his or its official capacity, and not to a private individual bringing a suit or any proceeding against such officer or commission. This would seem to be the true intent of this section, as evidenced by the qualifying words “against said officer or commission.”

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Mrs. Eva Hatton,
Clerk Supreme Court of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-347. CONTRACTS—VALIDITY OF—NEPOTISM ACT.

The Nepotism Act, chapter 19, Statutes 1925 (amended, chapter 22, Statutes 1927), does not affect contracts of employment of school teachers which were valid when made.

INQUIRY

Carson City, October 3, 1929.

A school teacher, subsequent to entering into a contract with the school board, marries a daughter of one of the school trustees.

Does the Nepotism Act prohibit the school trustee to whom he is thus related from issuing a warrant for his salary?

OPINION

The contract in question was valid at the time made, as the teacher in question was at that time related to no member of the school board. There is nothing in the State Nepotism Act that would require the school trustees to refuse to comply with the terms of this contract which was valid when made. The contract itself is not invalidated by the later relationship of one of the trustees to the teacher.

Therefore, it is not unlawful for such school trustee to issue a warrant for the salary of the teacher, although related to him by marriage.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Walter W. Anderson,
State Superintendent of Public Instruction
Carson City, Nevada

SYLLABUS

OPINION NO. 29-348. STATE EMPLOYEES—VACATIONS ACT NOT APPLICABLE TO COUNTY EMPLOYEE.

Revised Laws, 4109, and other laws respecting vacations for State employees, do not extend to county employees working on roads or otherwise.

INQUIRY

Carson City, October 16, 1929.

An individual has been employed by Lander County, working on the roads and county equipment, for more than one year last past. He has requested a two weeks' vacation from the Board of County Commissioners with pay. Is the Board of County Commissioners authorized to grant this request under the provisions of section 4109, or any other statutory provisions?

OPINION

Section 4109, Revised Laws of the State of Nevada, provides as follows:

Each and every state employee who has been in the service of the state for six months or more, in whatever capacity, shall be allowed, in each calendar year, a leave of absence of fifteen days, with full pay, providing the head of each department shall fix the date of such leave of absence.

I am unable to find any law which would authorize the Board of County Commissioners to give a vacation period to any county employee, with pay.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Howard E. Browne,
District Attorney, Lander County,
Austin, Nevada

SYLLABUS

OPINION NO. 29-349. TAXATION—WHEN NO DOUBLE—PUBLIC SCHOOL TEACHERS' FUNDS.

(1) Chapter 198, Statutes 1915, amended chapter 165, Statutes 1927, and State tax levy Acts (chapter 151, Statutes 1920, and succeeding years) examined, and held to negative theory of double taxation.

(2) State and county tax levy Acts and provisions for two distinct funds respecting public school teachers, held to be supplementary and not in conflict.

(3) Two levies of taxes in same year for the same purpose, or for similar (although not identical) purposes, if extending to all property, do not amount to double taxation.

INQUIRY

Carson City, October 19, 1929.

You refer us to Statutes 1915, chapter 198, as amended.

Subdivision 3 of section 1, as amended, makes it the duty of the County Commissioners to levy a tax of three cents on each one hundred dollars of all property in this State for the benefit of the public school teachers' permanent fund.

The State tax levy for 1929-1930 includes within the tax rate an item calling for a tax levy of five-tenths of one cent for teachers' retirement salary.

Section 2, Statutes 1915, chapter 198, provides that:

The public school teachers' retirement salary fund shall be made up of such moneys as shall be transferred from time to time under authority of this act from the public school teachers' permanent fund.

(1) With these several provisions of law in mind, is the Board of County Commissioners required to make the levy as required under subdivision 3 of section 1, Statutes 1915, as amended, or does the fact that the revenue here provided for is included in the State tax rate relieve the County Commissioners of designating this tax?

(2) Would the levy by the Board of County Commissioners of the amount of tax indicated constitute double or duplicate taxation?

(3) If so, should the proceeds from this levy be refunded to the counties?

OPINION

Statutes 1915, chapter 198, establishes two funds in the State Treasury to be known as the Public School Teachers' Retirement Salary Fund and the Public School Teachers' Permanent Fund.

The Public School Teachers' Permanent Fund is made up of (a) contributions made by the teachers; (b) interest derived from the investment of moneys contained in such fund; (c) an ad valorem tax of three mills on the hundred dollars of all taxable property in this State, to be levied and collected by the several counties; (d) donations, gifts, and legacies.

Section 2 of the Act provides that the Public School Teachers' Retirement Salary Fund shall be made up of transfers from the Public School Teachers' Permanent Fund.

After the enactment of this law and down to the year 1919, to sustain the Public School Teachers' Retirement Salary Fund, transfers from the Permanent Fund were the only source of revenue. By legislative Act, Statutes 1920, chapter 151, there was included in the State tax levy an item providing for a tax of five-tenths of one cent for the Public School Teachers' Retirement Salary Fund. From the year 1921 to the present time the Legislature has included this item in the State tax rate.

The Act of 1915 was amended by Statutes 1927, chapter 165. By this amendment the ad valorem tax to be levied by the County Commissioners was increased from three mills to five mills. At the same session of the Legislature the State tax rate included an item of five-tenths of one cent for Teachers' Retirement Salary Fund.

From this legislative history, it is made manifest that the Legislature determined that transfers from the School Teachers' Permanent Fund were not sufficient in amount to provide for the revenue necessary for the School Teachers' Retirement Fund and that, in order to replenish the retirement fund, revenue from sources other than transfers was imperative.

I am of the opinion that the levy and collection of a tax for the School Teachers' Permanent Fund, under Statutes 1915, as amended, and the levy of a tax for School Teachers' Retirement Fund as enacted in the State levies for the several years, could not be denounced as double or duplicate taxation.

Hon. John Chartz, District Attorney of Ormsby County, in 1928 conferred with me relative to this question and, while it is true that in this conference I concurred in the view that a collection of the tax by the county and State would constitute duplicate or double taxation, I have concluded from a careful review of the authorities that, in arriving at this opinion, due consideration was not given to the history of the legislative acts and the general principles of law applicable to such a state of facts.

It will be noted from the provisions of the Statutes of 1915 that two separate funds are designated and set apart in the office of the State Treasurer. While it is true that the Public School Teachers' Retirement Salary Fund is made up of transfers from the School Teachers'

Permanent Fund, this legislation would in no way prohibit the levying of an additional tax for the support of the latter fund if the transfers were not sufficient, nor would the levying of such a tax constitute double taxation.

Double taxation is defined as “taxing twice, for the same purpose, in the same year, some of the property in the territory in which the tax is levied, without taxing all of it. If all the property in the territory in which the tax is imposed is taxed twice and for the same purpose and in the same year, without discrimination or exemption, this is not double taxation in the sense that such taxation is objectionable, because, within constitutional limits, if the tax is uniform, the amount of it is in the discretion of the taxing authorities, and it may be levied at one time, or it may be the subject of several levies.” 26 R.C.L., sec. 231, p. 263. See, also, Cooley On Taxation, vol. I, p. 394.

We conclude, therefore, that the tax should be levied and collected by the Board of County Commissioners, the revenue derived therefrom to be placed in the Public School Teachers’ Permanent Fund, and that said tax should be collected and placed in the Public School Teachers’ Retirement Fund, and that the collection of the taxes indicated is not double taxation.

The answer to this question makes it unnecessary to reply to your other interrogatories.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. E.C. Peterson,
State Controller,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-350. MOTOR VEHICLE COMMON CARRIERS—FREE TRANSPORTATION—GENERAL ANTIPASS LEGISLATION.

Section 21, Public Service Commission Act, amended by chapter 14, Statutes 1928, construed and held to provide same exception to motor vehicle common carriers as is granted to railroads, although railroads only are mentioned in the excepting clause.

INQUIRY

Carson City, October 28, 1929.

This commission is in receipt of a request from motor vehicle carriers operating in this State for information concerning persons to whom free transportation may be issued by them, good between points in the State of Nevada.

This appears to be covered by section 21 of the Public Service Commission Act as amended in 1929. You will note that common carriers as a whole are prohibited from giving free or reduced rate transportation to any state, district, county or municipal officer. It is then provided that railroads may issue free or reduced rate transportation to certain specified classes of persons.

This statute is not clear upon what may be issued in the way of free transportation by a motor vehicle common carrier in this State. We would appreciate your construction of this section with regard to motor vehicle common carriers.

OPINION

Section 21, as amended, Statutes 1928, p. 21, makes it

unlawful for any person, firm, or corporation engaged in business as a common carrier to give or furnish any state, district, county or municipal officer of this state, or to any other person. *other than those named herein*, any pass, frank, free or reduced transportation, or for any state, district, county or municipal officer to accept any frank, pass, free or reduced transportation.

It further provides:

This act shall not be construed as preventing railroads from giving free transportation or reduced rates to ministers of the gospel, regularly employed secretaries of the Y.M.C.A. or Y.W.C.A., state officers of each recognized military ex-service organization, including ladies' auxiliaries thereof, not exceeding three from each such organization, constables, college professors, school teachers, students of institutions of learning, disabled or homeless persons, railroad officers, attorneys, directors or employees, or the members of their families, or pensioned or disabled ex-employees, their minor children or dependents, or bona fide ex-employees in search of employment, or to prevent the exchange of passes with officers, attorneys, or employees of other railroads, telegraph or express companies, and members of their families.

It will be noted from the wording of this section that all persons engaged in business as a common carrier are prohibited from issuing passes, etc., to any person "*other than those named herein*." While it is true, when the exception is stated, under the terms of the Act it designates railroad companies only, I am of the opinion that, in view of the specific language of section 21, which creates the exception to all persons engaged as a common carrier and specifically declares that a certain classification of persons exists to whom passes may be issued, motor vehicle common carriers would have the same authority to issue passes to the exceptions designated as would railroad companies.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Public Service Commission of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-351. FISH AND GAME—OPEN SEASON FOR MUSKRATS.

Chapter 178, Statutes 1929, being general in nature and subsequent to chapter 129, Statutes 1929, governs as to the (longer) open season on fur-bearing animals, including muskrats.

INQUIRY

Carson City, November 6, 1929.

Your opinion is respectfully requested upon the interpretation of the following statutes:

Chapter 129 of the Laws of 1929, under section 4, gives the open season on muskrats between December 31 and the following March 1. This law was approved March 26, 1929.

Under Chapter 178 of the Laws of 1929, under section 1, classes muskrats under the head of fur-bearing animals and, under section 77 of said chapter, it gives the open season between November 15 and March 15 following.

Will you kindly give me your opinion as to what is the open season for trapping muskrats in the State of Nevada?

OPINION

Statutes 1929, chapter 178, is a general law, creating the Fish and Game Commission and providing a comprehensive method for regulating fish and game. It is apparent from an examination of the statute that, by its provisions, the Legislature intended to embrace within its terms all essential regulations covering the general scope of fish and game.

By section 77 of this law, it is made unlawful to hunt or trap fur-bearing animals except between the 15th day of November and the 15th day of March. Section 1 of the Act includes muskrat within the definition of fur-bearing animals. Section 78 makes it unlawful to molest or destroy any muskrat nests.

Statutes 1929, chapter 129, was approved three days prior to the general law referred to. Under section 4 of chapter 129, it is made unlawful to capture or trap or kill muskrats between March 1 and December 31.

It is apparent, therefore, that the provisions of section 4, chapter 129, and the provisions of section 77, chapter 178, are in conflict.

I am of the opinion that the provisions of the general Act must control, and that, the general Act being inconsistent with the provisions of chapter 129, this Act is repealed.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. E.E. Winters,
District Attorney of Churchill County,
Fallon, Nevada

SYLLABUS

OPINION NO. 29-352. MEDICAL PRACTICE ACT—LICENSE.

Section 17, Medical Practice Act of 1905, does not extend to person residing but not practicing in Nevada prior to 1905. Such person must submit to examination and receive license before practicing medicine in Nevada.

INQUIRY

Carson City, November 26, 1929.

Would a person holding a diploma and certificate from another State and residing in this State prior to 1905 be entitled to register his diploma under the Medical Practice Act of 1905? This person never actively practiced medicine in this State.

OPINION

Section 17 of the Medical Practice Act provides:

Every person practicing medicine, surgery, or obstetrics in the State of Nevada on the first Monday of May, 1905, shall submit to the said board his or her diploma for registration.

It will be noted that the requirement of this section is to the effect that one must have practiced medicine prior to May, 1905, in this State, to be eligible to register his or her diploma.

The alternative to registering under section 17 is to submit to an examination before the Board of Medical Examiners.

The party named in the inquiry does not come within the terms of section 17 and would, therefore, be compelled to submit to an examination before being granted a license to practice medicine.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Dr. E.E. Hamer,
Secretary, State Board of Medical Examiners,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-353. OFFICIAL BONDS—NEVADA NATIONAL GUARD.

Chapter 153, Statutes 1929, sections 23 and 78, held not to provide appropriate fund for payment of premiums on bonds of officials of Nevada National Guard.

INQUIRY

Carson City, December 18, 1929.

Calling attention to the provisions of section 78, chapter 153, Statutes 1929, which governs the giving of bonds by officials of the Nevada National Guard, your opinion is requested:

First—Are the premiums on these bonds legally payable from the fund in the State Treasury set aside for the payment of premiums of official bonds of State officials?

Second—If not, are the premiums of these bonds such an expense as can be legally paid under the provisions of section 23 of such Act, under the heading of “Incidental Expenses?”

OPINION

Section 78, Statutes 1929, chapter 153, requires that both questions submitted be answered in the negative.

Section 78, after providing that officers of the National Guard must give bonds, contains the further following provision:

Where a bonding company is required or given as surety, the cost of bonds may be paid from the state allowance to commanding officers; provided, that the premium on the bond required to be furnished by any officer of the national guard of Nevada detailed or appointed to disburse United States funds may be paid to such officer upon proper claim from such military fund as the adjutant general may direct.

Under this section, therefore, two methods are provided: The premium on certain bonds to be paid from the State allowance to commanding officers; the premium on bonds under the second classification may be paid from such military fund as the Adjutant General may direct.

I am of the opinion, however, that section 23 of this statute could not be construed as a military fund from which such premiums might be paid, for the reason that this particular fund is an allowance made by the Board of County Commissioners for providing a suitable and safe armory with light, water, and heat, and the payment of incidental expenses. The fund thus created is payable from the General Fund of the county.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. J.H. White,
Adjutant General,
Carson City, Nevada

SYLLABUS

OPINION NO. 29-354. NEVADA NATIONAL GUARD—ACCOUNTING FOR COUNTY ADVANCEMENTS OF FUND.

(1) Sections 23 and 82, chapter 153, Statutes 1929, interpreted as providing means for reimbursing counties for National Guard expenses paid, at ultimate expense of State appropriation for military purposes (vide section 36 1/2 General Appropriation Act of 1929).

(2) Section 23 of said Act is not an appropriation, and does not amount to providing a lien against the General Fund.

INQUIRY

Carson City, December 27, 1929.

The State Treasurer has received three receipts from D W. Dunkle, Treasurer of Washoe County, in the total sum of \$36.05. These receipts represent money paid by Washoe County under the provisions of chapter 153, Statutes 1929, section 23.

(1) Can receipts of this sort be accepted in settlement of taxes collected for the State and, if so, how must the transaction be handled by the State Controller?

(2) Shall the Controller issue a warrant reimbursing the Treasurer, and to what appropriation and fund shall he charge the same?

OPINION

(1) Section 23, Statutes 1929, chapter 153, provides as follows:

It shall be the duty of the board of county commissioners of any county in which public arms, accouterments, or military stores are now had, or shall hereafter be received for the use of any companies of the Nevada national guard, subject to approval by the adjutant general, to provide a suitable and safe armory with light, water, and heat, and for the payment of incidental expenses of each company of the national guard organized within such county. The expenses of procuring and maintaining such armories and the incidental expenses incurred by each company shall be paid out of the general fund of the county to the commanding officer of such company, to be paid by the county treasurer on presentation of the auditor's certificate that such allowance has been made by the board of county commissioners. The treasurer shall require duplicate receipts from the person presenting said certificate, one of which shall be forwarded to the adjutant general, the other thereof shall be delivered to and received by the state treasurer as so much money and shall be considered and allowed for the full amount thereof in the settlement by the controller and state treasurer with the county treasurer. Such expenses shall not exceed one hundred (\$100) dollars per month for rentals for any company, nor fifty (\$50) dollars for incidental expenses.

It will be observed that the section authorizes the County Treasurer to present such receipts to the State Treasurer and the State Treasurer receives same "*as so much money and shall be considered and allowed for the full amount thereof in the settlement by the Controller and State Treasurer with the County Treasurer.*"

Answering your first question, therefore, you are advised that the receipt thus presented must be accepted by the State Treasurer and considered as cash.

(2) In order to handle the transaction in the State Treasurer's office, the State Controller should issue a warrant reimbursing the State Treasurer for the amount. This warrant can only be issued against the fund designated by section 82. This section provides as follows:

The controller of the state must draw his warrants for any amount approved and allowed as provided in this title, and the treasurer of the state must pay the same out of the appropriation for military purposes, if not otherwise provided.

Section 23 specifies no particular fund in the State Treasury from which the amount is payable; section 82, however, provides that all amounts are payable out of the appropriation (section 36 1/2, General Appropriation Act) for military purposes.

The amounts provided for in section 23 could not be paid from the General Fund because section 23 does not constitute an appropriation. *State v. La Grave*, [23 Nev. 25](#).

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Ed. C. Peterson,
State Controller,
Carson City, Nevada